

No. 14874

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United States  
Court of Appeals  
for the Ninth Circuit

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CHARLES W. HOFFRITZ,

Appellant,

vs.

UNITED STATES OF AMERICA, LAUGHLIN  
E. WATERS, United States Attorney, and IR-  
WIN R. WEISS,

Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

JAN - 3 1955

WILLIAM E. ORDEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature. errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 12, California.





In the United States District Court in and for the  
Southern District of California, Central Division

No. 17721-WM

CHARLES W. HOFFRITZ,

Plaintiff,

vs.

UNITED STATES OF AMERICA, LAUGHLIN  
E. WATERS, United States Attorney, and IR-  
WIN R. WEISS,

Defendants.

COMPLAINT FOR TEMPORARY RESTRAIN-  
ING ORDER AND INJUNCTION—SUP-  
PRESSION OF EVIDENCE, AND DE-  
MAND FOR JURY TRIAL

To the Honorable Judge of the United States Dis-  
trict Court, for the Southern District of Cali-  
fornia, Central Division:

The Complaint of Charles W. Hoffritz against  
the United States of America, Laughlin E. Waters,  
United States Attorney, and Irwin R. Weiss, and  
for cause of action for suppression of evidence, re-  
straining order, and injunction, alleges:

I.

That the plaintiff now is and during all times  
herein mentioned was a resident of the County of  
Los Angeles, State of California, and residing  
within the jurisdiction of the above-entitled court.

II.

That the defendant Laughlin E. Waters now is  
and during all times herein mentioned was the duly

constituted United States Attorney for the Southern District of California, Central Division. [2]

### III.

That the defendant Irwin R. Weiss, at all times herein mentioned was and is a special agent employed by the United States Treasury Department, Internal Revenue Service.

### IV.

That this is a civil action arising under the Constitution of the United States for the suppression of evidence and return of all books, papers, documents, and records, obtained by and through defendant Irwin R. Weiss, of the United States Treasury Department, Internal Revenue Service, which evidence the plaintiff alleges was obtained from him by fraud, deceit, trickery, and device, being, as hereinafter set forth, an illegal search and seizure, in violation of the plaintiff's constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States, and the Court has jurisdiction of the parties and the subject matter under and by virtue of Sections 1331-1358, Title 28, U.S.C.

### V.

That the defendant Irwin R. Weiss knew prior to the time that he obtained permission from the plaintiff to inspect his books and records that the purpose of his investigation was to obtain evidence for a contemplated criminal proceedings. The defendant Irwin R. Weiss fraudulently and deceitfully,

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**\*Page numbering appearing at foot of page of original Certified Transcript of Record.**

with intent to deceive, and mislead plaintiff for the purpose of obtaining the plaintiff's consent to inspect his books and records for the years commencing 1947, represented to the plaintiff, prior to obtaining his permission to inspect the books and records, that the defendant Irwin R. Weiss desired to recheck the plaintiff's individual books and records for the years 1947 and 1948, which had been previously audited by another revenue agent who made changes in the computation by capitalizing the cost of the trade name which had been expended, allocating a part of the building account to the value of the land, no previous land [3] allocation having been made, and disallowing certain improvements on a building which had been expended instead of capitalizing, all of which were civil adjustments, and upon which the plaintiff had paid the tax, and no civil fraud penalties had been assessed, the deficiency in 1947 being \$10.01, and for the year 1948, \$2,916.73, plus interest of \$563.28, or a total of \$3,480.01, all of which had been paid on July 10, 1950. That the said representations were false and were then and there known by the defendant Irwin R. Weiss to be false. That in truth and fact the defendant Irwin R. Weiss knew that if he advised the plaintiff that it was his purpose to obtain the plaintiff's books and records for a contemplated criminal proceedings, that the plaintiff would not give his consent to an inspection of his individual books and records. That the plaintiff believed and relied upon the said representations, and was there-

by induced to waive his constitutional rights, having no knowledgeable choice between relying upon his constitutional rights and waiving them, and granted the defendant Irwin R. Weiss permission to inspect his books and records for the purpose of rechecking them only. That thereafter the said Irwin R. Weiss made a transcript of the books and records, checks, receipts, invoices, for the years 1947 to 1951, inclusive. That at no time did the defendant Irwin R. Weiss inform or advise the plaintiff of his true purpose, nor did he advise him of his constitutional rights. Plaintiff further alleges that if the defendant Irwin R. Weiss had advised him of his constitutional rights and the true purpose of the intended investigation, the plaintiff would not have granted the defendant Irwin R. Weiss permission to inspect his books and records and make copies thereof.

## VI.

That the plaintiff is informed and believes that defendant Laughlin E. Waters intends to present some or all of the evidence which was illegally seized from the plaintiff in violation of his [4] constitutional rights through defendant Irwin R. Weiss, to the United States Grand Jury for the current term, for the purpose of obtaining an indictment or complaint before the Commissioner of this Court against the plaintiff charging him with income tax evasion in violation of Section 145(b) of Title 26, U.S.C. and Excise Tax Section 2400 of Title 26, U.S.C., and Excise Tax Section 2400 of Title 26, tation.

## VII.

That by reason of said alleged illegal search and seizure in violation of plaintiff's constitutional rights under the Fourth and Fifth Amendments under the Constitution of the United States, the United States of America, by and through its agents Laughlin E. Waters and Irwin R. Weiss, should be required to return to the plaintiff all transcripts of books, papers, documents, records and information obtained therefrom, and that the defendants United States of America, United States Attorney Laughlin E. Waters, Irwin R. Weiss, their servants, agents, employees, and assistants, be restrained from bringing before the United States Grand Jury or in any criminal proceedings before the Commissioner of this Court, such illegally obtained evidence, or information obtained therefrom.

## VIII.

That irreparable injury and hardship will be caused to the plaintiff if the United States Grand Jury were to indict him upon the illegally seized evidence which was obtained in the manner described herein, or if a complaint were issued by the Commissioner of this Court.

Wherefore, plaintiff prays:

1. That the defendants, their agents, servants, and attorneys, and all persons in active participation with them, be perpetually enjoined from presenting any and all of the evidence illegally obtained from the plaintiff, and all information obtained therefrom, to the United States Grand Jury, and



in any criminal proceeding [5] whatsoever, and that pending a final determination of the cause, a preliminary injunction issue restraining said defendants from each of said acts.

2. That this Court issue a temporary restraining order restraining the defendants and each of them, their agents, servants, and attorneys, and each of them, until the hearing upon said order from doing any of the acts mentioned in Paragraph 1 of this prayer for relief, and that this Court issue its preliminary injunction restraining the defendants herein named, and each of them, from doing any of the said acts until the entry of the Court's final judgment herein.

3. Suppress all evidence obtained as a result of the illegal means used to obtain the books and records of the plaintiff, and order the return of all transcripts and copies of records, books, invoices, checks, and other physical records and objects to the plaintiff or such other persons as may be lawfully entitled thereto.

4. For such other and further relief as to the Court may seem just.

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

A jury trial is demanded by plaintiff on all issues.

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed January 4, 1955. [6]

[Title of District Court and Cause.]

MOTION FOR PRELIMINARY AND  
· TEMPORARY INJUNCTION

Plaintiff moves the Court to grant a temporary and preliminary injunction against the defendant United States of America, its agents, servants, and attorneys, and all persons in active participation with them, pending a final determination of this action, and until further order of Court, restraining them from presenting to the United States Grand Jury or to the Commissioner of this Court or in any criminal proceedings, any and all of the information obtained from the individual books, records, and documents obtained by the defendant Irwin R. Weiss from the plaintiff by reason of the said illegal search and seizure. That unless restrained by this Court, defendants will commit the acts referred to, which will result in irreparable injury to the plaintiff, as more fully appears from the Affidavit of Charles W. Hoffritz and the Complaint on file herein, and by this reference made a part hereof.

Dated: January 4, 1955.

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

[Endorsed]: Filed January 4, 1955. [8]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR  
TEMPORARY AND PRELIMINARY IN-  
JUNCTION

State of California,  
County of Los Angeles—ss.

Charles W. Hoffritz, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action. That this is an action for a temporary restraining order, injunction and suppression of evidence for the reason that the defendant Irwin R. Weiss, Special Agent of the United States Treasury Department, Internal Revenue Service, obtained from the affiant by fraud, deceit, trickery, and device an inspection of his individual books and records. That affiant is informed that the defendant Irwin R. Weiss knew that if he advised the affiant that it was his purpose to obtain an inspection of affiant's books and records in connection with a contemplated criminal proceedings, that the affiant would not give his consent to said inspection. That affiant is informed that [9] at said time the defendant Irwin R. Weiss intended to make an investigation for the purpose of obtaining evidence for a contemplated criminal proceedings, which information had been furnished to him by one Dorothy Varble, an informer and an employee bookkeeper of the affiant. That in order to obtain the affiant's consent, defendant Irwin R. Weiss fraudulently



and deceitfully represented to the affiant that the purpose of the inspection was to recheck the affiant's individual books and records for 1947 and 1948, which had been previously audited by Revenue Agent Forrest Calkins. That affiant was aware of the fact that the previous audit did not disclose any matters of civil or criminal fraud, but were merely civil adjustments, and for the year 1947 the deficiency amounted to only \$10.01, and for the year 1948 amounted to \$2,916.73 plus interest, all of which had been paid on July 10, 1950.

The representations made by the defendant Irwin R. Weiss were false, and were then and there known by him to be false, and that affiant relied upon the representations and was thereby induced to consent to the inspection, having no knowledgeable choice between relying upon his constitutional rights and waiving them.

That the affiant is informed and believes that the defendant United States Attorney Laughlin E. Waters will present through the defendant Irwin R. Weiss the information and transcripts of the books and records obtained by him to the United States Grand Jury, before the 12th day of January, 1955, as well as information obtained therefrom, for the purpose of obtaining an indictment against the affiant, or a complaint from the Commissioner of this Court, in violation of Section 145(b) of Title 26, U.S.C., and Excise Tax Section 2400 of Title 26, U.S.C., unless this Court will restrain such presentation of evidence. That unless, pending

hearing on an Order to Show Cause why a Preliminary Injunction should not be issued, a temporary restraining order is granted by this Court, the affiant will be indicted or a complaint will be issued against him [10] before the hearing upon the Preliminary Injunction can be had, and defendants will have committed the action sought to be restrained.

That affiant hereby refers to the Complaint herein, and makes the same a part hereof by reference as though fully set forth.

Wherefore, affiant prays that this Court issue a temporary injunction, restraining each of the defendants herein named, their attorneys, agents, servants, and employees from doing any of the acts hereinabove set forth, until a hearing upon an Order to Show Cause why a Temporary Restraining Order should not be issued can be had.

/s/ CHARLES W. HOFFRITZ.

Subscribed and sworn to before me this 4th day of January, 1955.

[Seal] /s/ BERNARD B. LAVEN,  
Notary Public in and for the Said County and  
State.

[Endorsed]: Filed January 4, 1955. [11]

In the United States District Court in and for the  
Southern District of California, Central Division

No. 17721—WM

CHARLES W. HOFFRITZ,

Plaintiff,

vs.

UNITED STATES OF AMERICA, LAUGHLIN  
E. WATERS, United States Attorney, and IR-  
WIN R. WEISS,

Defendants.

ORDER TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER

Upon motion of the plaintiff and upon reading and filing the verified complaint of plaintiff in this action, and the Affidavit of the plaintiff, and good cause appearing therefor,

It is Hereby Ordered that the defendant United States of America, by and through its agents, Laughlin E. Waters, United States Attorney, and Irwin R. Weiss, Special Agent of the Treasury Department, Internal Revenue Service, be and appear before this Honorable Court on the 10th day of January, 1955, at the hour of 10 o'clock a.m., then and there to show cause, if any they have, why they and their agents, servants, employees, and attorneys should not be enjoined and restrained during the pendency [19] of this action or until further order of Court from presenting any and all information and evidence obtained from the

books, records, papers, and documents belonging to the plaintiff, and all transcripts of books, papers, documents and records obtained from the plaintiff by reason of the alleged illegal search and seizure, to the United States Grand Jury, or to the Commissioner of this Court, or in any criminal proceeding.

It Is Further Ordered that a copy of the Complaint, the Affidavit of Charles W. Hoffritz, together with Points and Authorities, be served on the defendant Laughlin E. Waters, United States Attorney, and defendant Irwin R. Weiss, Special Agent of the Treasury Department, Internal Revenue Service, not later than the 5th day of January, 1955.

Dated: January 4, 1955.

/s/ WM. C. MATHES,

Judge of the United States  
District Court.

[Endorsed]: Filed January 4, 1955. [20]

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[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION  
FOR INJUNCTION AND/OR MOTION TO  
SUPPRESS EVIDENCE

United States District Court,  
Southern District of California—ss.

Irwin R. Weiss, being first duly sworn, deposes and says:

(1) That I am employed as a special agent of the Intelligence Division, Internal Revenue Service, 417 South Hill Street, Los Angeles, California; that I have been employed in this capacity since February 1, 1946;

(2) That I was assigned on April 7, 1953, to conduct a preliminary investigation of the income tax liability of Charles W. Hoffritz, d.b.a. Glo-Dial Clock Company, 922 West 23rd Street, Los Angeles, California;

(3) That pursuant to such assignment I presented myself at the office of the Glo-Dial Clock Company on April 14, 1953, at [21] approximately 9:00 a.m.; that I asked for Mr. Hoffritz and was told by Mrs. Dorothy Varble that he (Mr. Hoffritz) had not arrived at the office, but should arrive shortly; that I showed Mrs. Varble my credentials and stated that I was assigned to conduct an investigation of Mr. Hoffritz's income tax returns, and that I would await the arrival of Mr. Hoffritz;

(4) That Mrs. Varble offered to call Mr. Hoffritz at his (Mr. Hoffritz's) home on the possibility that he was still there, which was done; that I told Mr. Hoffritz (over the telephone) that I was assigned to conduct an investigation of his income tax liabilities; that Mr. Hoffritz informed me that I could have all of his books and records for examination and to inform his bookkeeper, Mrs. Varble, of this; I, however, requested Mr. Hoffritz to personally make known his desires in this connection.



After I had so requested Mr. Hoffritz, I again turned the telephone over to Mrs. Varble and asked her if she would take a message from Mr. Hoffritz.

(5) Mrs. Varble then showed me to a small office and handed me two binders which appeared to contain general ledger sheets and journals. I started to examine these records and was doing so when a man who I had later identified to me as Charles W. Hoffritz arrived. Mr. Hoffritz arrived at about 10:30 or 11:00 o'clock of that same morning. Mr. Hoffritz saw that I was working at the records Mrs. Varble had previously given to me and I told Mr. Hoffritz that I was from the Bureau of Internal Revenue and was conducting an investigation of his income tax liabilities for the years 1948 through 1951. I also showed to Mr. Hoffritz my credentials which is a leather bound identification case showing that I was a Special Agent of the Treasury Department of the Internal Revenue and which contained my picture and my signature. I still have this case and it is substantially the same excepting the portion referring to me as a "Special Agent" has been brought to date, but in all [22] other respects it clearly indicated what my capacity then was and now is. Mr. Hoffritz took these credentials in his hand and appeared to examine them;

(6) At no time did Mr. Hoffritz state that he had any objections to me examining any of his books and records, in fact, during the course of the two or three weeks that I worked in examining

records at his place of business he, Mr. Hoffritz, frequently would talk to me. He was very friendly and told me that if there were any records that I wanted to look at for me to just ask and he would try to produce them. In this connection, Mr. Hoffritz asked Mrs. Varble to turn over to me his personal stock record ledger and Mrs. Varble did turn this over to me and I used it in my examination. Mr. Hoffritz also instructed Mrs. Varble to get from the safe that she maintained, his personal bank records, such as his duplicate deposit slips, bank statements, and cancelled checks and these, in the presence of Mr. Hoffritz, were also turned over to me and I examined them;

(7) The course of my examination of Mr. Hoffritz's records was primarily that of any accountant. I made transcripts from his records;

(8) In the course of the days that I was at Mr. Hoffritz's place of business he asked me whether my audit would cover the year 1952 and I told him "No" because I had not as yet been able to get the original of his return for that year from the Bureau as it was being processed. After which Mr. Hoffritz said he had his copy and inquired if I couldn't work from it. I told him that would be satisfactory and Mr. Hoffritz then asked Mrs. Varble to get his copy of his return for the year 1952 and make me a copy, which Mrs. Varble did and she supplied me with the copy which I still retain in the investigative file;

(9) That during the audit, I requested certain records [23] applicable to the years prior to 1948 of Mr. Hoffritz; Mr. Hoffritz inquired of the reason for this request, in that he claimed that Internal Revenue Agent Forrest Calkins had checked him for these years; that I told him that if he had any objection, the request would be withdrawn; Mr. Hoffritz then stated that he had no intention to withhold any records and these records were also made available by Mr. Hoffritz;

(10) That during the investigation of the case at the office of the Glo-Dial Clock Company, which took place almost daily between April 14, 1953, and May 1, 1953, Mr. Hoffritz made several visits daily into the office assigned to me and voluntarily discussed various topics, such as prior audits by the Internal Revenue Service, his family, and life history; and that, in addition he (Mr. Hoffritz) expressed satisfaction that this investigation appeared to be so thorough and was being brought up to date;

(11) That at no time did your affiant attempt to, or in fact, deceive or misrepresent to Mr. Hoffritz his capacity as a Special Agent of the Bureau of Internal Revenue, but in fact did fully inform Mr. Hoffritz on several occasions that your affiant was directed to investigate Mr. Hoffritz's tax obligations for the period commencing with the year 1948 through 1951, and your affiant fully believes that Mr. Hoffritz was willing to and most voluntarily turned over to your affiant for inspection all



the books and records that your affiant reviewed and inspected during the course of his stay in Mr. Hoffritz's office and place of business;

(12) That your affiant endeavored to reconcile the business records of Mr. Hoffritz's business with the returns that Mr. Hoffritz had filed for the years 1948 through 1952, and found that Mr. Hoffritz's records did substantially coincide and could be reconciled with such returns. That by further and additional investigation conducted by your affiant outside of the books and records made available by Mr. Hoffritz, it was ascertained that considerable [24] additional income of a taxable nature was received and earned by Mr. Hoffritz for the taxable years 1948 through 1952 which was not reported nor reflected in the returns, the subject of this investigation, and upon which no tax had been paid up to and including the date of the investigation of April 14, 1953;

(13) That your affiant now directs his attention to page 2, line 10, of the Affidavit of Charles W. Hoffritz pertaining to the statement of a previous audit for the years 1947 and 1948. At the time I was conducting my investigation I was not assigned to concern myself with such alleged audit. However, since examining Mr. Hoffritz's Affidavit I have caused to be checked, and did in fact check the Los Angeles records of the Internal Revenue Bureau and found that such records reflect the following: That a prior audit was conducted by Internal Revenue Agent Forrest Calkins for the

years 1945 through 1947, that the results of this audit showed additional taxes plus interest due from Mr. Hoffritz for those years as follows:

1945 Additional taxes and interest..total	\$ 97.14
1946 Additional taxes and interest...total	3480.01
1947 Charles W. Hoffritz additional	
taxes and interest.....total	29.82
1947 Mrs. Doe Hoffritz additional	
taxes and interest.....total	11.54

(14) That all payments on the above additional assessments were made to the Collector of Internal Revenue, according to the records, for all such years on July 11, 1950, with the exception of Mrs. Doe E. Hoffritz's liability for 1947, which was paid on September 25, 1950;

(15) That shortly after I had commenced working on the books and records provided to me by Mr. Hoffritz, namely, within a few days after April 14, 1953, a gentleman was introduced to me by Mr. Hoffritz, by the name of Ward A. Faora. Mr. Hoffritz stated that [25] this man was a C.P.A. who was employed by him in the capacity of an outside auditor and in substance told Mr. Faora that I was from the Bureau of Internal Revenue checking on his income tax returns and records, during which time I had Mr. Hoffritz's books and personal business records laid out on the table in the office which had been assigned for me to work in, and this gentleman, Mr. Faora, stated that he had prepared several of Mr. Hoffritz's income tax returns.

Mr. Hoffritz told me that if I needed any help that I could call upon Mr. Faora to help me in my work;

(16) That at no time did affiant state to Mr. Hoffritz that the purpose of the inspection was to recheck Mr. Hoffritz's individual books and records for 1947 and 1948, but did at all times state that the purpose of affiant's investigation pertained to Mr. Hoffritz's income tax liabilities for the years 1948 through the year 1951, which was later supplemented to include the year 1952, upon the request of Mr. Hoffritz.

/s/ IRWIN R. WEISS.

Subscribed and Sworn to before me this 12th day of January, 1955.

EDMUND L. SMITH,  
Clerk, United States District  
Court.

By /s/ MAXINE LEWIS,  
Deputy.

[Endorsed]: Filed January 13, 1955. [26]

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION  
FOR INJUNCTION AND/OR MOTION TO  
SUPPRESS EVIDENCE

United States District Court,  
Southern District of California—ss.

Mrs. Dorothy Varble being first duly sworn, deposes and says:

(1) That she was heretofore employed by Charles W. Hoffritz, at his place of business known as Glo-Dial Clock Company, 922 West 23rd Street, Los Angeles, California, as the full charge book-keeper of the said Mr. Hoffritz's business for a period of approximately five years prior to her resignation, during the month of July, 1953.

(2) That during the course of her employment and commencing from about the beginning of same, she was told by Charles W. Hoffritz, hereinafter referred to as Mr. Hoffritz, to fully cooperate and make available all of his records to any authorized Government official, [27] namely, as to representatives of the State, with reference to sales tax, and as to representatives of the City, with reference to sales tax, when such tax became effective, and with any representative of the Federal Government who sought to view his records respecting any excise tax that might be due, and as to any income tax investigation that might be conducted. Your affiant recalls that Mr. Hoffritz has upon many occasions during her employment stated that all of his records

should be made available for inspection for any such official agents.

(3) That on or about April 14, 1953, a man who your affiant has later had identified to her as Irwin R. Weiss, came to such place of business about the hour of 8:30 a.m., and stated that he would like to see Mr. Hoffritz. I told Mr. Weiss that Mr. Hoffritz was not in and probably would not be in his office for some little time. I asked Mr. Weiss what he wanted and he told me he was from the Bureau of Internal Revenue and he showed me his credentials, and stated that he was there to check Mr. Hoffritz's income tax liabilities, to which I responded "O.K.," I can give you the books. To which Mr. Weiss stated "No, I do not want to look at any of Mr. Hoffritz's records unless Mr. Hoffritz consents for me to do so." I then stated that I would call Mr. Hoffritz on the phone, as maybe I could catch him before he had left home. I then put in a call to Mr. Hoffritz's home where I talked to Mr. Hoffritz, whose voice I clearly recognized. I told Mr. Hoffritz that there was a Government agent from the Bureau of Internal Revenue in the office who wanted to look at his books with regard to his income tax, to which Mr. Hoffritz said: "Give him what he wants." I turned to Mr. Weiss and told Mr. Weiss what Mr. Hoffritz had said. Mr. Weiss said, "Let me talk to him." Mr. Weiss then picked up the speaker of the phone and I heard him say to Mr. Hoffritz that he was an Agent from the Bureau of Internal Revenue and would like to be able to examine his (Mr. Hoffritz's) books and records for



the purpose of checking his income [28] tax liabilities. After Mr. Weiss had spoken to Mr. Hoffritz, he, Mr. Weiss, turned over the phone to me, but before doing so Mr. Weiss had said that he wanted Mr. Hoffritz to tell me what to do. I then again spoke to Mr. Hoffritz on the telephone and was instructed by Mr. Hoffritz to give Mr. Weiss whatever he wanted and to make him comfortable.

(4) After the above, I showed Mr. Weiss to a small office which I told him he could use. I then gave to Mr. Weiss two binders one of which contained the journals from approximately 1944 through 1952, and the other the general ledger sheets for the same period for the business owned by Mr. Hoffritz, known as the Glo-Dial Clock Company. That is all the records I gave Mr. Weiss on that occasion.

(5) About an hour or two later Mr. Hoffritz came to the place of business. I saw Mr. Hoffritz go direct to the office where Mr. Weiss was sitting and he appeared to have a conversation with Mr. Weiss, but I did not hear it, except that I heard audible sounds. After the above, I saw that Mr. Weiss stayed at the place of business for about the remainder of the day. Mr. Weiss appeared to be going over some records. I paid very little attention to what he was actually doing. Mr. Hoffritz, if my memory serves me right, was also there the biggest part of the day. I observed that he appeared to be talking to Mr. Weiss from time to time.

(6) Shortly after Mr. Weiss had first come to the office on April 14, 1953, Mr. Hoffritz called to me and said: "Dorothy (Dorothy being my first name and the name he used when he wanted me), give him (referring to Mr. Weiss) anything he wants." Following the first day that Mr. Weiss came, Mr. Weiss continued to come to the same place of business for a period of two or three weeks. He would sometimes stay for a few hours and other times all day. I saw him working upon various books and documents but paid no particular attention as to just what he was working upon. During this period [29] I saw Mr. Hoffritz frequently go into the office where Mr. Weiss was working and appear to be talking to Mr. Weiss. During the period Mr. Weiss was working on the records at Mr. Hoffritz's place of business, I recall upon one occasion Mr. Hoffritz asking Mr. Weiss if he, Mr. Weiss, was going to work upon his 1952 income tax return, and as I recall Mr. Weiss said he had been unable to obtain from the Bureau the return for that year. After which, Mr. Hoffritz said, "Dorothy, get my copy of the return for 1952, and make a copy for Mr. Weiss." I went and got Mr. Hoffritz's 1952 return and made a copy of it and gave it to Mr. Weiss as Mr. Hoffritz had told me to do. During this period, that Mr. Weiss was at the office, I recall that upon one occasion Mr. Hoffritz said that he wanted to get the matter cleared up to date.

(7) While Mr. Weiss was working at the office, I saw Mr. Hoffritz himself turn over to Mr. Weiss

other personal finance records that Mr. Hoffritz personally kept in his desk. One of these was a ledger containing Mr. Hoffritz's stock transactions. And upon another occasion I followed Mr. Hoffritz's direction and went to the safe where were kept the business records and because Mr. Hoffritz told me to do so, I turned over the duplicate deposit slips, bank statements and cancelled checks of Mr. Hoffritz's personal bank account to Mr. Weiss.

(8) During the two- or three-week period that Mr. Weiss came nearly every day to the place of business, I at no time heard Mr. Hoffritz object to Mr. Weiss inspecting any of the business or personal records owned by Mr. Hoffritz. In fact, at all times Mr. Hoffritz appeared to be anxious to accommodate Mr. Weiss and told me that I should accommodate Mr. Weiss as far as was possible.

(9) From time to time while Mr. Weiss was there, he, Mr. Weiss, would ask me to help him interpret or explain various entries. Mr. Hoffritz had told me that I should fully cooperate with Mr. [30] Weiss and give him all the help I could and I did from time to time, when asked by Mr. Weiss, interpret and explain entries in the books and records.

(10) The first time I learned that Mr. Weiss was a Special Agent of the Bureau of Internal Revenue was towards the end of the audit being conducted of Mr. Hoffritz's business by Mr. Weiss, when Mr. Hoffritz asked me, whether or not I knew that Mr. Weiss was a "Special Agent" of the Bureau of Internal Revenue? I said I did not, and Mr. Hoffritz



replied: "Well, he is." This conversation took place during the last week of April, 1953.

/s/ DOROTHY VARBLE.

Subscribed and Sworn to before me this 12th day of January, 1955.

EDMUND L. SMITH,

Clerk, United States District  
Court.

By /s/ MAXINE LEWIS,

Deputy.

[Endorsed]: Filed January 13, 1955. [31]

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[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE  
DEMAND FOR JURY

To the Plaintiff Above Named and to Bernard B.  
Laven, His Attorney:

You and Each of You Will Please Take Notice that the above-named defendants, by and through the undersigned, will bring the following Motion to Strike Demand for Jury, under Rule 12(f), Federal Rules of Civil Procedure, on for hearing before the above-entitled Court in the Courtroom of the Honorable Wm. C. Mathes, United States District Judge, in the United States Post Office and Court-house Building, 312 North Spring Street, Los Angeles, California, on Monday, the 24th day of Janu-

ary, 1955, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: This 17th day of January, 1955.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States At-  
torney, Chief of Civil Div.

/s/ CECIL HICKS, JR.,  
Assistant United States Attorney, Attorneys for  
Defendants. [33]

[Title of District Court and Cause.]

#### MOTION TO STRIKE DEMAND FOR JURY

Come Now the defendants above named, by and through their attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz, Assistant United States Attorney, Chief of Civil Division, and Cecil Hicks, Jr., Assistant United States Attorney, and without waiving their right to file an answer to the Complaint for Temporary Restraining Order and Injunction, Suppression of Evidence, and Demand for Jury Trial, herein, moves the Court for an order striking the demand for jury trial from the said Complaint herein, pursuant to Rule 12(f), Federal Rules of Civil Procedure, on the ground that such demand is immaterial.

This Motion is based upon and will be presented upon the said Complaint for Temporary Restraining Order and Injunction filed herein by the plaintiff, these Motion papers, and Memorandum of Points and Authorities in Support of Motion to Strike Demand for Jury, together with all the records and files previously filed herein by the respective parties hereto.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States Attorney, Chief of Civil  
Division;

/s/ CECIL HICKS, JR.,  
Assistant United States Attorney, Attorneys for De-  
fendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 17, 1955. [34]

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[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES W. HOFFRITZ IN  
OPPOSITION TO AFFIDAVITS OF  
IRWIN R. WEISS AND DOROTHY VAR-  
BLE

State of California,  
County of Los Angeles—ss.

Charles W. Hoffritz, being first duly sworn, de-  
poses and says:

That the affiant has read the Affidavits of Irwin R. Weiss and Dorothy Varble filed in opposition to the Motion for Injunction.

Reply to Affidavit of Irwin R. Weiss

With reference to the statements in Paragraph 3, the affiant does not have any personal knowledge of the statements therein made, and upon that basis denies each and every statement and allegation therein contained. With reference to the statements in Paragraph 4, to wit: "that I told Mr. Hoffritz (over the telephone) that I was assigned [39] to conduct an investigation of his income tax liabilities; "the affiant denies the said statement, and in opposition thereto alleges that Mr. Weiss said that he wanted to look at the books for 1947 and 1948 again. Affiant further denies that he informed Mr. Weiss that he could have all of his books and records for examination and to inform his book-keeper, Mrs. Varble, of this.

With reference to the statements in Paragraph 5, the affiant alleges in opposition thereto, that he went into the small office where Mr. Weiss was and introduced himself and saw that Mr. Weiss had a ledger before him and assumed that it was for the years 1947 and 1948. Mr. Weiss did not at that time or any other time state to affiant that he was from the Bureau of Internal Revenue and was conducting an investigation of affiant's income tax liabilities for the years 1948 to 1951, nor did he at that time or any other time show the affiant any

credentials, nor did affiant at that time or any other time examine Mr. Weiss' credentials. That affiant assumed that by reason of the instructions that he had given Mrs. Varble that she had given Mr. Weiss the ledger which concerned only the years 1947 and 1948. With reference to all the other statements in said paragraph, affiant does not have any personal knowledge of said statements, and therefore denies them on that ground.

With reference to the statements in paragraph 6, the affiant states that he assumed at all times that the audit which Mr. Weiss was making had reference to 1947 and 1948, and did not at any time have any knowledge of an audit by Mr. Weiss of any other years. That the information which was turned over to Mr. Weiss had reference to the years 1947 and 1948, and in view of the fact that the Revenue Agent, Forrest Calkins, who had previously made an audit of 1947 and 1948, had resolved all of the questions of liability by certain civil technical adjustments, affiant assumed that Mr. Weiss' examination was for civil purposes, because affiant was not at any time advised that Mr. Weiss' purpose was otherwise. [40]

With reference to the statements in paragraph 7, the affiant has since learned that Mr. Weiss is not an accountant, but is a special agent for the Bureau of Internal Revenue, whose primary purpose is to procure evidence for a criminal fraud prosecution, and that the work of accountants is done by a revenue agent such as Forrest Calkins, who made the previous examination.



With reference to the statements in paragraph 8, the affiant denies each and every statement therein made, and the only conversation which he remembers relative to the 1952 return was that he was asked if he had a copy.

With reference to the statements in paragraph 9, affiant admits that he stated that Mr. Forrest Calkins had checked him for the years 1947 and 1948, and that Mr. Weiss had stated that he wanted to check those records again. With reference to all other statements in said paragraph, the affiant denies each and every one of them.

With reference to paragraph 10, the affiant admits that he saw Mr. Weiss at various times and gave him certain information regarding the fact that Mr. Forrest Calkins had spent considerable time making an audit of his books and made certain minor technical adjustments. With reference to all other statements in said paragraph, affiant denies each and every one of them.

With reference to the statements in paragraph 11, the affiant states that Mr. Weiss knew at the time that he requested the affiant's books and records that it was his purpose to obtain evidence for a criminal prosecution, and that he did not inform me of that fact, and that had he so advised me I would not have given my permission for him to look at my books and records for 1947 and 1948, and that I was further misled by the fact that Mr. Calkins had made his audit and made some technical civil adjustments, upon which I had paid the

tax. At no time was I willing to turn over the books to Mr. Weiss or anyone else for the purpose [41] of making a criminal investigation, and Mr. Weiss at all times led me to believe that he was rechecking the audit which had been made by Mr. Calkins.

With reference to paragraph 12, the books and records were kept by the bookkeeper under the supervision of a certified public accountant, and affiant at all times believed that they were correct. That Dorothy Varble had been a bookkeeper and trusted employee of the affiant since 1948. Affiant is informed and believes that Dorothy Varble, for the purpose of obtaining an informer's fee and obtaining control of the affiant's business with her husband, who was the affiant's superintendent, had informed the Bureau of Internal Revenue of certain alleged irregularities which she herself had committed, prior to the time that Mr. Weiss made his request, and that Mr. Weiss knew at the time that he talked to the affiant on the telephone that the purpose of his investigation was to obtain evidence for a criminal indictment and that he was not there acting as an accountant, but that he was at all times a special agent and that his duties are not those of accountant but only to investigate criminal fraud; that he never stated at any time that he was investigating a criminal fraud case.

With reference to the statements in paragraph 13, affiant admits that he did make certain payments which were as a result of the audit made by Rev-

enue Agent Forrest Calkins, and therefore he assumed that his returns were correct as filed.

With reference to the statements in paragraph 15, the affiant denies each and every statement therein contained, except that he admits that he did introduce Mr. Faora as a certified public accountant to Mr. Weiss, and stated that he was familiar with the books and might be able to assist if there were any questions.

With reference to the statements in paragraph 16, the affiant denies each and every statement therein, and realleges [42] that Mr. Weiss stated that his audit was to check the books and records again, and that at no time did he state to the affiant that his purpose was to obtain evidence of criminal fraud.

## II.

### Reply to Affidavit of Dorothy Varble.

With reference to the statements in paragraph 2, the affiant denies each and every statement therein contained.

With reference to the statements in paragraph 3, the affiant does not have any personal knowledge of the conversation between Dorothy Varble and Irwin R. Weiss. In opposition to the statement of Dorothy Varble that "I told Mr. Hoffritz that there was a Government agent from the Bureau of Internal Revenue in the office who wanted to look at his books with regard to his income tax \* \* \*" the affiant alleges that the conversation on the tele-



phone with Dorothy Varble was to the effect that there was a government man in the office who wanted to look at the books. The affiant further denies all of the other statements contained in said paragraph.

With reference to paragraph 4, the affiant does not have any personal knowledge of the statements therein, and therefore denies them on that ground.

With reference to the conversations alleged in paragraph 6, the affiant denies all of said conversations contained in said paragraph.

With reference to paragraphs 7 and 8, the affiant denies each and every allegation and statement therein contained.

With reference to paragraph 9, the affiant denies that he ever told Dorothy Varble to co-operate with and interpret and explain any entries in the books and records to Mr. Weiss. With reference to paragraph 10 wherein Dorothy Varble stated that she learned that Mr. Weiss was a special agent toward the end of the [43] audit, the said Dorothy Varble on the 25th day of August, 1953, made a statement under oath to Ezra Stein and Bernard B. Laven, affiant's attorneys, in which she stated that she learned that Mr. Weiss was a special agent after he had finished his audit and was out of there. In this same Affidavit she further stated that in her first conversation with Mr. Weiss at the office, that he did not tell her the purpose for which he wanted to see the books, nor did he tell Mr. Hoffritz

that he was a special agent from the Bureau of Internal Revenue, and further that she did not hear any of the conversation between Mr. Hoffritz and Mr. Weiss at that time.

With reference to all other matters that are not specifically denied, the affiant denies each and every one of the statements and allegations.

/s/ CHARLES W. HOFFRITZ.

Subscribed and sworn to before me this 26th day of January, 1955.

[Seal]      /s/ BERNARD B. LAVEN,  
Notary Public in and for Said  
County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 28, 1955. [44]

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[Title of District Court and Cause.]

AFFIDAVIT OF WARD A. FAORO

State of California,  
County of Los Angeles—ss.

Ward A. Faoro, being first duly sworn, deposes and says: That he is a certified public accountant, licensed to practice as such in the State of California, and that he has been rendering services as a certified public accountant, and prepared the 1948

income tax return for Charles W. Hoffritz, as an individual.

That the only occasion which he remembers meeting Mr. Irwin R. Weiss was one time when he was making a routine call and he stopped in and Mr. Hoffritz introduced the affiant to Mr. Weiss as his certified public accountant who was looking after the books; that if there was any question regarding the books, that the affiant might be able to assist him. That I never saw Mr. Weiss at any other time, and at that time Mr. Weiss did not [46] indicate in any manner that he was a special agent, but appeared to me to be a revenue agent.

/s/ WARD A. FAORO.

Subscribed and sworn to before me this 26th day of January, 1955.

[Seal]      /s/ BERNARD B. LAVEN,  
Notary Public in and for Said  
County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 28, 1955. [47]

[Title of District Court and Cause.]

## FURTHER AFFIDAVIT OF IRWIN R. WEISS

United States District Court,  
Southern District of California—ss.

Irwin R. Weiss, being first duly sworn, deposes and says:

(1) I am employed as a Special Agent of the Intelligence Division, Internal Revenue Service, 417 S. Hill Street, Los Angeles, California, and have been employed in such capacity since February 1, 1946.

(2) I graduated from Ohio State University, Columbus, Ohio, in June, 1932, with a degree in Business Administration and a major in Accounting; I was employed in an accounting capacity for private firms and in governmental agencies since graduation from college and until employed by the Intelligence Division, Internal Revenue Service, with the exception of military service from September 15, 1942, to January 10, 1946. [58]

(3) My duties as a Special Agent of the Intelligence Division, Internal Revenue Service, are to conduct independent investigations involving income and other tax frauds, and when violations of internal revenue laws or other statutes are disclosed to secure evidence for use in court; to examine and analyze accounting books and records of individuals and corporate taxpayers, and of concerns and individuals transacting business with taxpayers, includ-

ing banks, brokerage houses, public records, etc. My duties also include interviewing witnesses and the preparation of a comprehensive report of findings, with specific recommendation as to action to be taken. In criminal cases, I assist in the preparation of the case for trial by the United States Attorney's office and testify as a witness for the Government.

(4) I conduct the preliminary investigation of individuals and corporate taxpayers involving suspected income and other tax fraud cases. When more definite information is secured of the possible evasion of income and other taxes, a case number for the case is secured, the co-operation of an Internal Revenue Agent is requested, and the investigation proceeds on a joint basis with the revenue agent. This may result in either civil or criminal proceedings. If the preliminary investigation by the Special Agent does not indicate a possible evasion of income and other taxes, but does indicate a tax deficiency, the investigation is turned over to the Internal Revenue Agents for their completion of the case.

(5) Internal Revenue Agents conduct preliminary investigations of individuals and corporate taxpayers, which in some instances involve suspected income and other tax fraud cases. When information is secured of possible fraud, the investigation is discontinued, a report is written and the co-operation of a Special Agent is requested, and the investigation then proceeds on a joint basis,



which may result in either civil or criminal proceedings. [59]

(6) Only a small minority of investigations conducted by Special Agents results in criminal proceedings against individuals or corporations for violation of the internal revenue laws. For the period of July 1, 1954, to December 31, 1954, the statistics with respect to investigations, processed by Special Agents in the Intelligence Division, Los Angeles, California, is as follows:

Preliminary investigations assigned .....	298
Investigations reaching numbered status (evidence of fraud revealed).....	63
Prosecution recommended by Special Agents..	28
Forwarded to Department of Justice for criminal prosecution .....	15
Forwarded to United States Attorney for Criminal prosecution .....	10

(7) On April 7, 1953, I was assigned to conduct an investigation of the income tax liabilities of Charles W. Hoffritz, doing business as Glo-Dial Clock Company, on a preliminary basis. The books and records of the Glo-Dial Clock Company were turned over to me on a voluntary basis by Mr. Hoffritz. During the audit of the books and records, which took place between April 14, 1953, and May 1, 1953, Mr. Hoffritz visited the office assigned to me on the premises of the company, several times a day, and discussed various topics on a voluntary basis, such as personal history, prior audits by the Internal Revenue Service, etc. My audit of



Mr. Hoffritz's books and records revealed that they conformed to his tax returns for the years 1948 to 1952, inclusive. After completing my examination of Mr. Hoffritz's books on May 1, 1953, I conducted a further investigation and discovered that a substantial number of sales by Mr. Hoffritz was not reflected in his books and records and not reported in his tax returns for 1948 to 1952. On May 5, 1953, I requested a case number for this investigation and a case [60] number was assigned on June 4, 1953. An Internal Revenue Agent was assigned to the case on June 8, 1953. The books and records were not inspected and Mr. Hoffritz was not contacted after May 1, 1953.

/s/ IRWIN R. WEISS.

Subscribed and Sworn to before me, this 4th day of February 1955.

CLERK,

U. S. District Court, Southern  
District of California;

By /s/ MAXINE LEWIS,  
Deputy.

[Endorsed]: Filed February 4, 1955. [61]

[Title of District Court and Cause.]

REPLY TO FURTHER AFFIDAVIT OF IR-  
WIN R. WEISS AND POINTS AND  
AUTHORITIES IN OPPOSITION TO RE-  
LIEF SOUGHT

I.

Counsel for the defendants is not correct in stating the contention of the plaintiff, in that no issue is made of the fact that the Special Agent Weiss did not warn the plaintiff of his constitutional rights; but, to the contrary, the point urged by the plaintiff was that Special Agent Weiss obtained the plaintiff's consent to inspect his personal books and records by fraud and deceit, in that he did not act in good faith when he knew that the purpose of his investigation was to obtain evidence for a criminal indictment, and with this knowledge he did not inform or advise the plaintiff of his true purpose.

The Court's inquiry at the oral argument was directed to the question of whether or not the investigation was being made by Special Agent Weiss as a routine audit, and as a result of that [62] audit Special Agent Weiss discovered for the first time certain evidence which tended to support a criminal indictment, or whether Special Agent Weiss had been informed that there was a basis for a criminal investigation for fraud. The plaintiff urged that a routine audit is made by a revenue agent, and not by a special agent, and therefore

the Court's inquiry was directed to the difference between the duties of a special agent and a revenue agent.

It is obvious from the Further Affidavit of Irwin R. Weiss, in paragraph 1, that he is a special agent of the Intelligence Division of the Bureau of Internal Revenue, and, in paragraph 3, that his "duties are to conduct an independent Investigation involving income and other tax frauds, and when violations of internal revenue laws or other statutes are disclosed to secure evidence for use in court \* \* \*"

In paragraph 4 he again states that he conducts the preliminary investigation of individuals and corporate taxpayers involving suspected income and other tax fraud cases, which is further evidence that his duties involve tax matters in which fraud is suspected. Therefore, there must be a basis for this suspicion before the case is assigned to him.

In paragraph 7, he states that on April 7, 1953, he was assigned to conduct an investigation of the income tax liabilities of Charles W. Hoffritz, but fails to state whether or not the Special Agent in charge made the assignment, and where the Special Agent in charge obtained the information upon which to base the assignment to Mr. Weiss. It is significant that an Internal Revenue agent was not assigned to the case until June 8, 1953, which was nearly seven weeks after he commenced his investigation, and after he had completed his investigation on June 4, 1953. It should be pointed out

that Mr. Weiss' Further Affidavit is general and evades the specific facts which the Court [63] requested.

Therefore, in order to have before the Court all of the facts, it is necessary that a trial be had upon the merits after the usual discovery proceedings in civil cases have been completed.

## II.

### The Distinction Between the Duties of an Internal Revenue Agent and a Special Agent

Prior to the reorganization of the Bureau of Internal Revenue in 1952, the Revenue Agent in charge was charged with the duty of auditing the returns received from the Collector of Internal Revenue's office, which were divided into the following classes: (1) Those returns which were so complicated or so important that a field investigation was required without further consideration; (2) those returns which appeared to contain only minor irregularities which could be adjusted by correspondence with the taxpayer or by interviewing him at the office of the Internal Revenue Agent in Charge; and (3) those returns which did not appear to warrant investigation or contact with the taxpayer either by interview or correspondence. The returns selected for field examination were then subjected to further study by the office of the Internal Revenue Agent in charge, and assigned by him for field examination. See Mertens Law of Federal Income Taxation, Vol. 9, Sec. 49.23, p. 24, Sec. 49.27, p. 26.

Under the Bureau of Internal Revenue's Reorganization Plan No. 1 of 1952, the function of the Internal Revenue Agent and Special Agent was not changed. The function of the Special Agent is described in Treasury Department, Internal Revenue Circular 1-R. E. O. #1, dated May 12, 1952, and is as follows:

“The Intelligence Division embraces all Special Agents and will handle for the Director's office the type of work corresponding to that of a branch office of the present Intelligence Division under a Senior Special Agent. Thus [64] the separate identification of intelligence work, together with the rights to which Special Agents are entitled under the old organization, will be retained. In some Districts, there may not be an “Intelligence Division” in every Director's office because the size of the area covered or the workload may not justify a separate division. In those cases where it is not justified, the Special Agents for that territory will be assigned to the “Intelligence Division” at the District Commissioner's level. However, there will be no diminution in the intelligence activity, nor is there any intent to make any material shifts in the location of posts of duty.

“Intelligence Division. Responsible for the investigation of tax fraud, enrollment, and other types of cases delegated to the Intelligence Division, and the preparation of prosecution and tax reports thereon; for operation of special racketeer tax drive



and approval of all such cases for closing; and enforcement of the wagering tax law.”

To the Special Agent was assigned the principle investigatory work where fraud in a return was suspected, and as in the past, where potential fraud cases were assigned to the Special Agent whether initially, or being called into an investigation being done by a Revenue Agent, who has gone far enough in his examination to suspect fraud and who feels the need of the expert hand of the Special Agent.

See: *Fraud Under Federal Tax Law*, 2nd Ed. 1953, Balter, pp. 72 to 74, inclusive.

It should be noted from Special Agent Weiss' Affidavit that he initially was assigned the investigation, which was an indication to him that fraud was suspected, and therefore supports the plaintiff's position that Special Agent Weiss did not act in good faith. [65]

Under the Reorganization Plan No. 1, 1952, the audit division of the Director's office continued to conduct the examination of the books and records the same as before the reorganization took place. See: Charts 1, 2, and 3 of the Reorganization Plan of the Bureau of Internal Revenue, 1954, Cumulative Pocket Supplement, Vol. 9, *Law of Federal Income Taxation*, Mertens, pp. 37 to 40, inclusive.

The distinction between an Internal Revenue Agent and a Special Agent is best described by Joseph R. Baradell, former Special Agent in charge

New York Intelligence Division, Bureau of Internal Revenue, in the 12th Annual Institute of Federal Taxation, New York University, November, 1953, at page 59, where he points out the difference in their duties as follows:

“A Revenue Agent’s duties are inspection of problems contained in the audit of the taxpayer’s records, and determination of his correct tax liability.

“The Special Agent’s duties and responsibilities are primarily concerned with developing fraud features of the case, including a questioning of witnesses under oath, and procurement of documentary evidence for such use in court proceedings. He is also charged with the responsibility of recommendation for or against both criminal prosecution and ad valorem penalties for fraud or negligence.”

The Honorable H. Brian Holland, Assistant attorney General, in charge of Tax Division, Department of Justice, in the sixth annual meeting of the Tax Institute, U.S.C. School of Law, at page 446, stated:

“Investigations in cases of suspected tax evasions and other offenses under the Internal Revenue laws are made by Special Agents of the Intelligence Division of the Internal Revenue Service. If the Intelligence Division considers prosecution to be warranted, a recommendation to that effect [66] is transmitted to the Regional Enforcement Counsel, and if he agrees the case is forwarded to the

Department of Justice where it is assigned to the criminal section of the 'Tax Division.'

See, also, *Fraud Under Federal Tax Law*, 2nd Ed. 1953, Balter, Sec. 27, p. 69.

With reference to the revised opinion in the Guerrina case, January 11, 1955, C. C. H. Standard Federal Tax Reports, Paragraph 9143, Page 54,223, the revised opinion of Judge Clary does not support the Government's position, in that the Court pointed out that its previous order to return all evidence was in error, but that evidence obtained by an unconstitutional search and seizure is not admissible against the defendant, and a conviction obtained thereon would of necessity have to be reversed, which is the position that the plaintiff takes in the instant action.

It should be noted in that case that the government in its application for reconsideration requested the Court to reconsider and vacate its finding that the visit and examination of the Internal Revenue Agents on December 26, 1949, constituted an illegal search and seizure, on the basis that the request is that the defendant had failed to sustain his burden of establishing an illegal search and seizure. The Court stated:

"I disagree under the facts as I have found them in the previous opinion. Without a search warrant and without permission from the defendant, the Agents walked into his office, gained access to his closed files and took therefrom checkbooks, invoices

and other records. I found that such action was without defendant's permission, was not in pursuance of a search warrant legally issued, and was, therefore, an unlawful search and seizure in violation of the Fourth Amendment to the Constitution of the United States." [67]

The Court further stated:

"The Government has argued that the defendant by asking the Agents on or about December 22, 1949, whether they had all they needed, gave the Agents a blanket invitation to return thereafter in his absence to go through all his files and examine all books and records therein contained. I did not in my previous opinion and do not now construe defendant's words as granting permission to the Agents to return in his absence and search his files."

The Court further stated:

"That part of the Order of May 5, 1953, ordering the return of any property taken from the files of the defendant in his absence on December 26, 1949, and suppressing all evidence obtained on that visit by the Internal Revenue Agents will stand."

The Court finally states:

"Evidence obtained by an unconstitutional search and seizure is not admissible against the defendant and a conviction obtained thereon would of necessity have to be reversed."

It is respectfully submitted that in view of the

case of *Weldon v. U. S.*, 196 F. (2) 874, 875, and the other cases previously cited in plaintiff's Further Points and Authorities, that a full and complete civil trial should be had, where all the evidence and facts can be brought before this Court, after the usual civil discovery proceedings have been had, including the production of the assignment dated April 7, 1953, which is mentioned in paragraph 7 of the Further Affidavit of Irwin R. Weiss.

Respectfully Submitted,

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 11, 1955. [68]

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[Title of District Court and Cause.]

ORDER ON MOTION UNDER RULE 41 (e)  
OF FEDERAL RULES OF CRIMINAL  
PROCEDURE

Plaintiff having filed a "Complaint for Temporary Restraining Order and Injunction, Suppression of Evidence, and demand for Jury Trial," alleging violation of the Fourth Amendment prohibition against "unreasonable searches and seizures," and violation of the Fifth Amendment provision against self-incrimination; and it appearing to the Court:

(1) that the action is properly to be treated as a motion pursuant to Rule 41(e) of the Federal



Rules of Criminal Procedure permitting a "Motion for Return of Property and to Suppress Evidence";

(2) that, concerning as they may discipline [75] of an officer of the court, and being of an equitable nature, the provisions of Rule 41(e) contemplate that the motion shall be heard and "tried upon the facts by the Court without a jury" [*Chieftain Pontiac Corp. v. Julian*, 209 F. 2d 657, 659 (1st Cir., 1954); Rules 47, 12(b)(4) Fed. Rules Crim. Proc., 18 U.S.C.A.; *Centraccio v. Garrity*, 198 F. 2d 382, 385 (1st Cir.), cert. denied, 344 U.S. 866 (1952); *United States v. Rosenwasser*, 145 F. 2d 1015, 1017 (9th Cir. 1944); see *United States v. Rosenwasser*, 323 U.S. 360 (1945); cf. *Weldon v. United States*, 196 F. 2d. 874, 875 (9th Cir. 1952)].

(3) that plaintiff admittedly consented to the inspection of his books by Special Internal Revenue Agent Weiss, but was not informed that the examination was being undertaken because plaintiff was suspected of willful tax evasion [see: *Montgomery v. United States*, 203 F. 2d 887, 892-893 (5th Cir., 1953); *Massei v. United States*, 295 Fed. 683, 684 (4th Cir.), cert. denied, 264 U.S. 592 (1924)].

(4) that plaintiff alleges he understood, when he gave consent, that the examination of his books concerned only his tax liability for the years 1947 and 1948, whereas it actually concerned his tax liability for the years 1948 through 1951, and later on 1952.

(5) that here, as in *United States v. Wolrich*,

119 F. Supp. 538 (S.D.N.Y., 1954), "The revenue agent made no attempt to hide his official identity or the official purpose of his business. Surely [76] defendant was aware that, if a 'routine audit' revealed evidence of criminal liability, the agent would not ignore it merely because he was primarily concerned with civil liability. Defendant was apprised of the fact that his books were sought for investigation by an official of the Internal Revenue Bureau." [119 F. Supp. at 540].

(6) that "failure to warn the defendants of their constitutional rights before questioning them [at a time when criminal prosecution was contemplated] as to their potential tax liability does not per se and as a matter of law render their admissions involuntary. The circumstances of the investigation and the failure to warn the defendants of their constitutional rights were matters which went only to the weight and credibility of the evidence thus obtained and not to its admissibility." [United States v. Guerrina, 126 F. Supp. 609, 610 (E.D. Pa. 1955)].

(7) that a reasonable man must be held to understand, when he opens his private books to an investigator charged with enforcing the law, criminal and civil, that he permits inspection for all purposes relevant to the inquiry—unless he imposes some specific limitation.

(8) that unlimited consent given under such circumstances is consent "voluntarily and understandingly given" [Powers v. United States, 223

U. S. 303, 313 (1912); accord, *Wilson v. United States*, 162 U. S. 613 (1896)].

(9) that assuming all of plaintiff's allegations to be true, and in particular that Special [77] Agent Weiss knew that fraud was suspected but did not inform plaintiff that the purpose of the investigation was to acquire evidence for a criminal prosecution, nevertheless plaintiff's constitutional rights to be free from "unreasonable searches and seizures" and from being "compelled \* \* \* to be a witness against himself" were not violated [U. S. Const., Amend. IV, V]; and

(10) that "Even if the Government Agents obtained the voluntary disclosures \* \* \* by the guile of a false representation that no investigation was pending \* \* \* it could not be said that such a stratagem constitutes an unreasonable search and seizure within the meaning of the Fourth Amendment" [*Chieftain Pontiac Corp. v. Julian*, supra, 209 F. 2d at 659-660; accord, *United States v. American Stevedores*, 16 F. R. D. 164, 171 (S.D. N.Y. 1954); see *Bowles v. Chew*, 53 F. Supp. 787 (N.D. Cal., 1944)].

It is Ordered:

(a) that the order to show cause issued January 4, 1955, is hereby discharged.

(b) that defendants' "Motion to Strike Demand for Jury" filed January 17, 1955, is hereby granted.

(c) that plaintiff's motions to suppress evidence

and for return of property, and for a preliminary injunction, are hereby denied; and

(d) that defendants serve and lodge with the Clerk within ten days findings of fact, conclusions of law and judgment accordingly, to be settled pursuant to local rule 7. [78]

It is Further Ordered that the Clerk this day serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

March 28, 1955.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed March 29, 1955. [79]

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[Title of District Court and Cause.]

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter having come on for hearing on the first day of February, 1955, before the Honorable William C. Mathes, United States District Judge, the plaintiff represented by his counsel, Bernard B. Laven, and the defendants represented by their counsel, Laughlin E. Waters, United States Attorney for the Southern District of California, and Max F. Deutz and Cecil Hicks, Jr., Assistants United States Attorney for said district, and the Court having received affidavits, writ-

ten briefs and oral argument, and the Court being fully satisfied in the premises, makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

I.

That the action is a motion for return of property and to suppress evidence, pursuant to Rule 41(e) of the Federal Rules [80] of Criminal Procedure.

II.

That Irwin R. Weiss is a Special Agent of the Intelligence Division, Internal Revenue Service, United States Treasury Department.

III.

That on April 14, 1953, Special Agent Weiss called at the office of the plaintiff, Charles W. Hoffritz, doing business as Glo-Dial Clock Company, 922 West 23rd Street, Los Angeles, California, and returned there from time to time up to and including May 1, 1953.

IV.

That on April 14, 1953, Special Agent Weiss advised plaintiff that he was investigating plaintiff's income tax liabilities, and made no attempt to hide his official identity or purpose of his business, but did not advise plaintiff of his right, under the United States Constitution, Amendment V, not to be a witness against himself.

V.

That plaintiff gave Special Agent Weiss permission to examine his books and records, and plaintiff



imposed no limitation on his consent, and that Special Agent Weiss did thereafter inspect said books and records.

## VI.

That plaintiff's consent given to Special Agent Weiss to examine plaintiff's books and records was voluntarily and understandingly given, was not revoked, and continued to be voluntary during the period of investigation of said books and records by Special Agent Weiss.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law: [81]

## Conclusions of Law

### I.

That the action commenced by plaintiff is a motion for return of property and to suppress evidence, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure.

### II.

That the action arises out of this Court's power to discipline an officer of the Court and is equitable in nature, and further, pursuant to said Rule 41(e), the motion shall be heard and tried upon the facts by the Court without a jury.

### III.

That the failure of Special Agent Weiss to advise plaintiff of his right, under the United States Constitution, Amendment V, not to be a witness against himself, does not render plaintiff's consent to examine his books involuntary.

## IV.

The failure of Special Agent Weiss to advise plaintiff that a criminal investigation was pending was not a strategem amounting to an unlawful search and seizure within the meaning of the United States Constitution, Amendment IV.

## V.

That plaintiff, as a reasonable man, is held to understand that when he gave permission to inspect his books and records to an investigator charged with enforcing the law, and placed no limitations on such permission, that he permits the inspection for all purposes relevant to the inquiry including evidence of wilfull tax evasion.

## VI.

The plaintiff's right to be free from unlawful searches and seizures under the United States Constitution, Amendment V, was not violated. [82]

## VII.

That plaintiff was not involuntarily compelled to be a witness against himself.

## VIII.

That plaintiff's consent to examine his books and records was voluntarily and understandingly made, was not revoked, and continued to be voluntary during the period of investigation of said books and records by Special Agent Weiss.

Let Judgment Be Entered Accordingly.

Dated at Los Angeles, California this 18th day of April, 1955.

/s/ WM. C. MATHES,

United States District Judge.

Lodged April 8, 1955.

[Endorsed]: Filed April 18, 1955. [83]

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United States District Court, Southern District of  
California, Central Division

No. 17721-WM (Civil)

CHARLES W. HOFFRITZ,

Plaintiff,

vs.

UNITED STATES OF AMERICA, LAUGHLIN  
E. WATERS, United States Attorney, and  
IRWIN R. WEISS,

Defendants.

### JUDGMENT

The above-entitled matter having come on for hearing on the first day of February, 1955, before the Honorable William C. Mathes, United States District Judge, the plaintiff being represented by his counsel, Bernard B. Laven, and the defendants being represented by their counsel, Laughlin E. Waters, United States Attorney for the Southern District of California, and Max F. Deutz and Cecil Hicks, Jr., Assistants United States Attorney for said district, and the Court having received affi-

davits, written briefs and oral argument, and the Court being fully satisfied in the premises, and the Court having made and filed its Findings of Fact and conclusions of Law,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

I.

That the order to show cause issued January 4, 1955, should be, and hereby is, discharged. [84]

II.

That the defendant's motion to strike demand for jury filed January 17, 1955, should be, and hereby is, granted.

III.

That plaintiff's motions to suppress evidence and for return of property and for a preliminary injunction should be and hereby are, denied.

Dated at Los Angeles, California, this 18th day of April, 1955.

/s/ WM. C. MATHES,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged April 8, 1955.

[Endorsed]: Filed April 18, 1955.

Docketed and entered April 19, 1955. [85]

[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

Plaintiff, Charles W. Hoffritz, moves the Court for an Order granting a new trial in the above-entitled action, in which judgment was entered on the 19th day of April, 1955, on the following grounds:

1. Insufficiency of evidence to support the decision of the Court, in that the Further Affidavit of Irwin R. Weiss in paragraph 4 admits that he conducts preliminary investigations which might result in criminal proceedings, and which fact he suppressed from the plaintiff in obtaining his consent to inspect his personal books and records, and therefore there is no evidence that the consent of the plaintiff was entirely voluntarily and understandingly given.

2. Error in law, in that the Court found for the defendants under section 41(e) of the Federal Rules of Criminal Procedure, thereby depriving the plaintiff of a trial of a civil [87] genuine issue as to material facts.

3. Newly discovered evidence that has been discovered since the hearing of this cause, and could not have been obtained for use at the hearing herein by the exercise of reasonable diligence, and which evidence is material and not merely cumulative or impeaching in character, and is of such nature that if received at the hearing, it would have probably produced a different decision, all of which more fully appears from the Affidavit of Bernard B. Laven in support hereof.



Dated: April 26, 1955.

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 28, 1955. [88]

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL

To the Defendants and Their Attorney, Laughlin  
E. Waters, United States Attorney:

You and Each of You Will Please Take Notice that the plaintiff will, in the United States District Court for the Southern District of California, on May 9, 1955, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard in the courtroom of the Honorable William Mathes, move the court to vacate and set aside the decision of the court rendered in the above-entitled matter and grant a new trial of said cause, upon each and every one of the grounds as set forth in the Motion.

The motion will be made pursuant to Rule 59(a) F.R.C.P., and upon the Affidavit of Bernard B. Laven, Minutes of the Court, and upon all the files, records, and pleadings in said matter.

Dated: April 26, 1955.

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 28, 1955. [90]

[Title of District Court and Cause.]

AFFIDAVIT OF BERNARD B. LAVEN IN  
SUPPORT OF MOTION FOR NEW TRIAL,  
ON GROUNDS OF NEWLY-DISCOVERED  
EVIDENCE

State of California,  
County of Los Angeles—ss.

Bernard B. Laven, being first duly sworn, deposes and says:

That he is the attorney of record for the plaintiff. That as early as February 3, 1955, affiant wrote a letter to R. P. Hertzog, Acting Chief Counsel for the U. S. Internal Revenue Service, Washington, D. C., inquiring as to the duties of a Special Agent and those of a Revenue Agent, according to the Table of Organization as of April, 1953. That the affiant did not immediately receive any reply to said letter, and diligently pursued his inquiry to the said Chief Counsel, by writing another letter on February 22, 1955, and on March 1, 1955, received a letter of acknowledgement from said R. P. Hertzog to the effect that the letter had been referred to the Administration Office for [92] consideration, and it was not until March 29, 1955, that the affiant was able to obtain the desired information from the Regional Commissioner in San Francisco, a photostatic copy of which letter is marked Exhibit 1, attached hereto, and made a part hereof by reference as though fully set forth.

/s/ BERNARD B. LAVEN,  
Affiant.

Subscribed and sworn to before me this 26th day  
of April, 1955.

[Seal]     /s/ PERCY DRABIN,  
Notary Public in and for Said County and [93]  
State.

EXHIBIT No. 1

U. S. Treasury Department  
Internal Revenue Service  
Regional Commissioner  
San Francisco, Calif.  
P. O. Box 889

March 28, 1955.

In Replying Refer to Ad:PC.

Mr. Bernard B. Laven,  
Suite 1212,  
530 West Sixth Street,  
Los Angeles 14, California.

Dear Mr. Laven:

I have received your request of March 14, 1955,  
for information concerning duties and responsi-  
bilities assigned to Internal Revenue Agents and  
those assigned to criminal investigations (Special  
Agents). The following is a general discussion of  
such duties:

The duties of an Internal Revenue Agent are to  
administer, supervise, or perform work involved in  
determining by investigations of taxpayers' books

of accounts and records, and other sources of information, the correct tax liability of taxpayers filing individual, partnership, fiduciary, corporation, and consolidated corporation income and excess profits tax returns; giving technical advice to taxpayers and taxpayers' representatives on questions involving income and excess profits tax matters; redetermination of tax entirely through investigation of claims, (filed by the taxpayers) for refund of income and excess profits taxes; discussions with taxpayers or their representatives to reach agreement on matters in dispute; in regard to cases appealed to the Tax Court of the United States or tax cases to be tried in the Federal courts, in giving assistance and advice to Government counsel who are developing the case record in preparation for trial; in cooperating with and assisting attorneys assigned to the Office of the General Counsel and the Office of the Attorney General in income and excess profits tax problems.

The duties of a Special Agent are to administer, supervise, or perform work involved in the investigations of alleged or suspected wilfull attempts by taxpayers to defraud the Government, which usually concern income taxes, but may concern estate, gift, Social Security, or a variety of excise taxes, with particular reference to the criminal phase of the cases with a view toward establishing conclusive proof for presentation in the courts of taxpayers' deliberate attempts to evade taxes; investigations of charges of unethical or criminal actions on the

part of agents and attorneys enrolled to practice before the Treasury Department, and of applicants to practice before the Treasury Department. Holds conferences on the highest [94] level with taxpayer, his attorney and/or accountant, Internal Revenue Service officials, and representatives of the Federal Government, such as judges, U. S. Attorneys, and prosecuting attorneys; makes recommendations regarding the institution of criminal proceedings in tax fraud cases.

The functions of Internal Revenue Agents and Special Agents are not prescribed by law, rule, or regulation. The duties described above are merely typical of what an Internal Revenue Agent or Special Agent might do. The actual assignment of duties, such as the typical duties shown above, to an individual employee of the Internal Revenue Service designated as an Internal Revenue Agent or a Special Agent is effected by the administrative action of a properly authorized supervisor.

If I can be of any further assistance to you, please let me know.

Very truly yours,

/s/ F. M. HARLESS,

Acting Regional  
Commissioner.

[Endorsed]: Filed April 28, 1955. [95]



[Title of District Court and Cause.]

MINUTES OF THE COURT—MAY 31, 1955  
At Los Angeles, Calif.

Present: Hon. Wm. C. Mathes, District Judge.

Counsel for Plaintiff: Bernard B. Laven.

Counsel for Defendants: Cecil Hicks, As-  
sistant U. S. Attorney.

Proceedings:

For hearing motion of plaintiff for new trial.  
Court Orders said motion denied.

JOHN A. CHILDRESS,  
Clerk. [112]

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United States District Court, Southern District of  
California, Central Division

No. 17721—WM

CHARLES W. HOFFRITZ,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION  
FOR NEW TRIAL

Whereas, this matter came on for hearing on May  
31, 1955, on plaintiff's Motion for New Trial, plain-

tiff appearing by and through his attorney, Bernard B. Laven, and defendants appearing by and through their attorneys, Laughlin E. Waters, United States Attorney; Louis Lee Abbott and Cecil Hicks, Jr., Assistants United States Attorney, and the Court having heard argument thereon both written and oral, and the Court being fully advised in the premises and good cause appearing therefor,

It Is Ordered that plaintiff's Motion for New Trial be and the same hereby is denied.

Dated: This 7th day of June, 1955.

Approved as to Form:

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff.

/s/ WM. C. MATHES,  
United States District Judge.

[Endorsed]: Filed June 7, 1955. [113]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Charles W. Hoffritz, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Judgment entered in this action on the 19th day of April, 1955, and the Order denying Plaintiff's Motion for a New Trial entered on the 31st day of May, 1955.

Dated June 27, 1955.

/s/ BERNARD B. LAVEN,  
Attorney for Appellant.

[Endorsed]: Filed June 27, 1955. [114]

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[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF TIME  
WITHIN WHICH TO FILE RECORD AND  
DOCKET APPEAL UNDER RULE 73g,  
FEDERAL RULES OF CIVIL PROCE-  
DURE

It Is Hereby Stipulated by and between the attorneys for the respective parties that pursuant to Rule 73g of the Federal Rules of Civil Procedure, the plaintiff and appellant Charles W. Hoffritz shall have to and including seventy-five (75) days, to wit: from the 27th day of June, 1955, to and including the 9th day of September, 1955, within which to file and docket his appeal, on the grounds that the said time is necessary in order to complete the reporter's transcript and prepare the various documents which have been requested by plaintiff and appellant in his Designation of Record on Appeal.

Dated this 17th day of July, 1955.

/s/ CECIL HICKS, JR.,

By CECIL HICKS, JR.,  
Asst. U. S. Atty.

/s/ BERNARD B. LAVEN,  
Attorney for Plaintiff and  
Appellant.

It Is So Ordered this 18th day of July, 1955.

/s/ WM. C. MATHES,  
Judge of the District Court.

[Endorsed]: Filed July 18, 1955. [119]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 119, inclusive, contain the original:

Complaint.

Motion for Preliminary and Temporary Injunction.

Affidavit in Support thereof.

Points and Authorities in Support of Motion for P. and T. Injunction.

Order to Show Cause.

Affidavit in Opposition to Motion for Injunction.

Affidavit in Opposition to Motion for Injunction.

Motion and Notice of Motion to Strike demand for jury trial, etc.

Affidavit of Charles W. Hoffritz.

Affidavit of Ward A. Faoro.

Plaintiff's Further Points and Authorities.

Further Affidavit of Irwin R. Weiss.

Reply to Further Affidavit of Irwin R. Weiss.

Additional Points and Authorities on behalf of Plaintiff.

Order on Motion under Rule 41(e).

Findings of Fact and Conclusions of Law.

Judgment.

Motion for New Trial.

Notice of Motion for New Trial.

Affidavit of Bernard B. Laven.

Points and Authorities in Support of Motion for New Trial.

Additional Points and Authorities in Support of Motion for a New Trial.

Minutes of the Court for May 31, 1955.

Order Denying Plaintiff's Motion for New Trial.

Notice of Appeal.

Designation of Record on Appeal.

Stipulation for Extension of Time to Docket Record on Appeal.

which, together with a full, true and correct copy of minutes of the court for May 31, 1955, all in said cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 15th day of Sept., 1955.

[Seal]                      JOHN A. CHILDRESS,  
Clerk.

/s/ CHARLES E. JONES,  
Deputy Clerk.



[Endorsed]: No. 14874. United States Court of Appeals for the Ninth Circuit. Charles W. Hoffritz, Appellant, vs. United States of America, Laughlin E. Waters, United States Attorney, and Irwin R. Weiss, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 17, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14874

CHARLES W. HOFFRITZ,

Appellant,

vs.

UNITED STATES OF AMERICA, LAUGHLIN  
E. WATERS, United States Attorney, and IR-  
WIN R. WEISS,

Appellees.

CONCISE STATEMENT OF POINTS ON  
WHICH APPELLANT INTENDS TO RELY  
ON APPEAL

Appellant Charles W. Hoffritz states that the points on which he intends to rely on the appeal herein are as follows:

The Court erred:

1. In holding that plaintiff's civil action was a motion for return of property and to suppress evidence pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure;

2. In holding that the action arises out of the District Court's power to discipline an officer of the court and is equitable in nature, and pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure, the motion should be heard and tried upon the facts by the Court, without a jury;

3. In finding that plaintiff and appellant gave Special Agent Weiss permission to examine his

books and records and imposed no limitation on his consent;

4. In holding that the failure of Special Agent Weiss to advise plaintiff and appellant of his rights under the United States Constitution, Amendment V, not to be a witness against himself, does not render plaintiff and appellant's consent to examine his books involuntary;

5. In holding that the failure of Special Agent Weiss to advise plaintiff and appellant that a criminal investigation was pending was not a stratagem amounting to unlawful search and seizure within the meaning of the United States Constitution, Amendment IV;

6. In holding that the plaintiff and appellant, as a reasonable man, is held to understand that when he gave his permission to inspect his books and records to an investigator charged with enforcing the law, and placed no limitations on such permission, he permits the inspection for all purposes relevant to the inquiry, including evidence of wilfull tax evasion;

7. In holding that the plaintiff and appellant's right to be free from unlawful search and seizure under the United States Constitution, Amendment V, was not violated;

8. In holding that the plaintiff and appellant was not involuntarily compelled to be a witness against himself;

9. In holding that the plaintiff and appellant's consent to examine his books and records was vol-

untarily and understandingly made, was not revoked, and continued to be voluntary during the period of investigation of his books and records by Special Agent Weiss;

10. In finding that plaintiff and appellant's civil action for the return of personal property was a motion pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure;

11. In hearing the matter upon affidavits, depriving plaintiff and appellant of the trial of a civil action upon oral evidence and its merits;

12. In denying plaintiff and appellant's motion for a temporary injunction restraining the defendants and appellee from doing any of the acts mentioned in Paragraph 1 of his prayer for relief in his complaint;

13. In refusing to order the return of all transcripts of books, papers, documents, records, and information obtained therefor by Special Agent Irwin R. Weiss and belonging to plaintiff and appellant;

14. In refusing to order the suppression of all the property mentioned in Paragraph 13 herein as evidence.

Dated: September 22, 1955.

/s/ BERNARD B. LAVEN,  
Attorney for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 26, 1955.

Title of Court of Appeals and Cause.]

### STIPULATION

It Is Hereby Stipulated by and between the attorneys for the plaintiff and appellant and defendants and appellees that an Indictment was returned by the Grand Jury and filed with the Clerk of the United States District Court for the Southern District of California, Central Division, on August 31, 1955, charging the appellant herein, in Count One, with violation of Section 145 (b) of Title 26, U.S.C., with reference to the calendar year 1948; in Count Two, with violation of Section 145 (b), of Title 26, U.S.C., with reference to the calendar year 1949; in Count Three, with violation of Section 145 (b), of Title 26, U.S.C., with reference to the calendar year 1950; in Count Four, with violation of Section 145 (b), of Title 26, U.S.C., with reference to the calendar year 1951; in Count Five, with violation of Section 145 (b) of Title 26, U.S.C., with reference to the calendar year 1952; in Count Six, with violation of Section 2707 (c) of Title 26, U.S.C., with reference to the month of December, 1949; in Count Seven, with violation of Section 2707 (c) of Title 26, U.S.C., with reference to the month of February, 1950; in Count Eight, with violation of Section 2707 (c), of Title 26, U.S.C., with reference to the month of March, 1950; in Count Nine, with violation of Section 2707 (c) of Title 26, U.S.C., with reference to the month of December, 1950; and in Count Ten, with violation of Section 2707 (c) of



Title 26, U.S.C., with reference to the month of June, 1951.

Dated this 22nd day of September, 1955.

/s/ BERNARD B. LAVEN,  
Attorney for Appellant.

LAUGHLIN E. WATERS,  
United States Attorney;

By /s/ CECIL HICKS, JR.,  
Attorney for Appellees.

[Endorsed]: Filed September 26, 1955.